IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/07/2003

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRL. APPEAL NO.6 OF 2002

Devan @ Devaraj .. Appellant

-Vs-

State
by Inspector of Police
Thandarampattu Police Station
Thiruvannamalai District
(Cr. No.500/96) .. Respondent

This criminal appeal is preferred under Section 374 of Cr.P.C. against the judgment dated 21.3.2001 made in S.C.No.44 of 2000 on the file of the learned Principal Assistant Sessions Judge at Thiruvannamalai.

!For Appellant : Mr.V.Subramaniam
Amicus Curiae

^For Respondent : Mr.V.Jaya Prakash Narayan
Govt. Advocate (Crl. side)

:JUDGMENT

The sole accused, who was charged, tried, found guilty under Section 376(2)(f) I.P.C. and sentenced to undergo R.I. for 10 years along with a fine of Rs.500/-, in default 6 months R.I., has preferred this appeal.

2. The short facts necessary for the disposal of this appeal are as follows:

a) P.W.2, Elumbi @ Jayalakshmi aged about 10 years is the daughter of P.W.1, Jeyaraman. The accused aged about 20 years belonged to neighbouring village and he used to visit the village of P.W.1 frequently. Thus, the accused was already known to the P.W.2, victim. On 1.11.1 996 at about 4.00 p.m. when the young victim was taking bath in a lake, the accused came there and violently committed sexual assault on her. P.W.3, Vasantha, the elder sister of P.W.2, who was carrying food at that time, witnessed the said occurrence and lifted the accused, brought the victim outside and raised alarm. P.W.1, who was in the field nearby, rushed to the place and came to know about the occurrence.

b) P.W.1 took P.W.2 to Thandrampet Police Station and lodged a complaint before P.w.8, Sub Inspector of Police, who registered a case in

Crime No.500/1996 under Section 376 I.P.C. Express F.I.R. under Ex.P.7 was sent to the concerned Judicial Magistrate. The victim was sent to Government Hospital, Thiruvannamalai, where P.W.7, Doctor who was on duty medically examined her and recorded the statement of P.W.2. On 2.11.1996, P.w.9, the Investigating Officer received a copy of F.I.R, proceeded to the site of occurrence and prepared Ex.P.2, Observation Mahazar and Ex.P.8 rough sketch. He recovered the pieces of blood stained rock and sample rock, which were marked as M.Os.1 and 2 under Ex.P.3, mahazar. He examined Ex.P.3 and recorded her statement. The victim was sent by P.w.7 Doctor attached to Thiruvannamalai Government Hospital to Zipmer hospital, Pondicherry for further treatment. She was given further treatment from 2.11.1996 to 7.11.1996. The Investigating Officer proceeded to the Zipmer Hospital and recorded the statements of P.Ws.1 and 2 and also P.w.4, who is the mother of victim. On 3.11.1996, the accused was arrested at about 1.00 p.m. and sent for medical examination and he was found to be potent. P.w.9 Investigating Officer recorded the statement of P.w.7 Doctor, who attended the victim. P.w.9 made a requisition under Ex.P.9 to the Judicial Magistrate No.1, Tiruvannamalai requesting to send the materials for chemical analysis. Accordingly, they were sent for chemical analysis and Ex.P.10 report was also received. On completion of investigation, the Investigating Officer filed a charge sheet against the accused under Section 376(ii)(f) I.P.C.

3. In order to prove the charges levelled against the accused, the prosecution examined 9 witnesses and marked 10 exhibits and 2 M.Os. The accused was questioned under Section 313 of Cr.P.c. as to the incriminating circumstances found in the evidence of prosecution witness. He denied the same as false. No defence witness was examined. The trial court on consideration of the rival submissions and scrutiny of the materials available, has found the accused guilty and sentenced him to undergo imprisonment as referred to above. Hence, this appeal.

4. The learned Amicus curiae counsel appearing for the appellant raised the following submissions for consideration of this Court.

The trial court has relied on the sole testimony of P.W.2, which was filled up with inconsistency and discrepancy. Taking into consideration the age of the victim and in view of lot of discrepancies, the trial court should have rejected the case of prosecution. From the evidence of P.w.3, it would be clear that she could not have seen the occurrence. There was a considerable delay in filing F.I.R. No injuries were found in the private organ of the accused, which casts doubt whether he committed sexual assault as contended by the prosecution. The identification parade was not conducted, and hence, in the absence of the same, the trial court should not have accepted the testimony of P.W.2, who was of tender age. A close scrutiny of the evidence would clearly reveal that the prosecution case as narrated by the witnesses was highly improbable. Hence, in view of all the above, the trial court should have rejected the case of prosecution and acquitted the accused.

5. Stoutly opposing the contentions of the appellant's side, the learned Government Advocate would submit that it is true that the victim was only 10 years old, but she has clearly narrated the entire incident with full cogency; that the accused was already known to the victim because of his frequent visit to the village of victim; that he was familiar; that there was no difficulty for the victim to identify the assailant; that P.w.3 has clearly spoken about the actual incident, which was witnessed by her at the time of

occurrence; that she has clearly spoken about the commission of sexual assault by the accused on the victim; that the medical evidence was fully corroborated by the ocular evidence of prosecution and that the prosecution by producing overwhelming evidence has proved its case and the judgment of the lower court has got to be sustained.

6. After careful consideration of the rival submissions and the scrutiny of the materials available, this Court is of the considered view that there is no merit in this appeal. P.w.2, victim, who was of tender age, was sexually assaulted by the accused/appellant aged about 20 years when she was taking bath in a lake at about 4.00 p.m. on 1.1 1.1996. It is not in dispute that the accused belonged to neighbouring village and he was already known to the victim. A careful scrutiny of the evidence of P.w.2 would clearly indicate that though she was of tender age, she narrated the entire incident with cogency and in acceptable terms. Not only the evidence of P.W.2, victim was available to the prosecution, but also the evidence of elder sister, namely, P.w.3 was available. P.W.3 has witnessed the occurrence when the commission of rape was being committed by the accused on P.w.2. P.w.3' s evidence was fully corroborated the evidence of P.W.2. The young victim was taken to Government Hospital, Thiruvannamalai, where she was medically examined and treated by P.w.7 Doctor Vasantha. The following external injuries were found on the victim under Ex.P.5, Accident register copy:

1. An aberration in the spinal region in the limber area 2 cm x 1 cm red.
2. Multiple linear aberrations in the scapular regions in both sides in various sizes and shapes. Red colour.
3. Private parts:

a) Laceration of the perenium. Posterior vaginal wall and upper border of the anus and anal canal 5 cm x 2 cm x upto Anal Mucosa. Bleeding present on examination
b) Vagina congested with bleeding
c) Hymen torned
d) Vagina admits index finger freely with pain upto the base of the finger
e) Labiaminara, Majora and clitoris. Urethra intact.

7. It is pertinent to note that the occurrence has taken place at 4.00 p.m., a case was registered by 9.00 p.m. and she was medically examined by P.w.7 Doctor at 11.15 p.m. and thus, the ocular evidence adduced through P.w.2 victim was fully corroborated by the medical evidence adduced through P.W.7 and the accident register Ex.P.5. In view of the cogent evidence adduced by the prosecution through the prosecutrix coupled with the evidence of P.W.3, the Court is unable to agree with all or any one of the contentions put forth by the appellant' s side. It is true that there are minor discrepancies in the evidence of P.W.2, but these discrepancies need not be given undue importance or significance, since the minor discrepancies would not in any way affect the truth of the prosecution case.

8. The next contention that the clothes of the victim were not recovered cannot be countenanced for the simple reason that according to the prosecution, the victim was raped when she was taking bath in a lake. Hence, no recovery would be possible and the same were not recovered. This Court is unable to notice any delay in filing F.I.R., since immediately on coming to know about the occurrence P.w.1 took his daughter P.w.2 to All Women Police

Station, Thiruvannamalai where they were directed to go to Thandrampet Police Station and a case was registered at 9.00 p.m. Thus, it cannot be stated that there was a delay in filing F.I.R. Apart from that there was no possibility for making any improvement or embellishment in the prosecution case. In view of all the above, this Court is of the view that the prosecution has proved its case beyond reasonable doubt and the trial court was perfectly correct in finding the accused guilty under Section 376(2)(f) I.P.C. Coming to the question of punishment, the lower court has awarded minimum punishment available under the said section. Considering the facts and circumstances of the case, there is nothing to interfere either in the conviction or in the sentence imposed by the lower court on the appellant.

9. In the result, this criminal appeal fails and the same is dismissed, confirming the judgment of the lower court.

Index : Yes
Internet : Yes
vvk
To
1. The Principal Assistant Sessions Judge, Tiruvannamalai
2. The Principal Subordinate judge, Thiruvannamalai
3. The Sessions Judge, Thiruvannamalai
4. The Superintendent, Central Prison, Vellore
5. The Public Prosecutor, High Court, Madras 6. The Dy. Inspector General of Police, Chennai-4
7. Mr.V.Jaya Prakash Narayan, Govt. Advocate(Crl.side)
High Court, Madras
8. The Inspector of Police, Thandarampattu Police Station
Thiruvannamalai District